

FILED

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

MARVELLOUS A. GREENE, SR.,

Plaintiff - Appellant,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS; et al.,

Defendants - Appellees.

No. 05-56051

D.C. No. CV-05-03687-CBM

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Consuelo B. Marshall, Chief Judge, Presiding

Submitted February 13, 2006^{**}

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Marvellous A. Greene, Sr. (referring to himself as Marvellous Asha Xwah),
a California state prisoner, appeals pro se from the district court's judgment
denying his request to proceed in forma pauperis ("IFP") in his 42 U.S.C. § 1983

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

action alleging that prison officials interfered with his right to access the courts. The district court terminated this action after it denied Greene IFP status on the grounds that he had accrued “three strikes” under 28 U.S.C. § 1915(g). We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo a district court’s interpretation of section 1915(g) and related legal conclusions, *Andrews v. King*, 398 F.3d 1113, 1118 (9th Cir. 2005), and we affirm.

The district court properly denied Greene leave to proceed IFP because at the time he sought IFP status, he had filed three actions that qualified as “strikes,” and he did not allege he was in imminent danger of serious physical harm. *See* 28 U.S.C. § 1915(g); *Tierney v. Kupers*, 128 F.3d 1310, 1311-12 (9th Cir. 1997).

We construe the district court's termination of the action as a dismissal without prejudice to Greene’s filing a new action upon payment of the filing fees.

The remaining contentions lack merit.

Greene’s December 14, 2005 motion to remand this action to the district court is denied.

AFFIRMED